

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 TWELFTH STREET, SW**  
**WASHINGTON, DC 20554**

MEDIA BUREAU  
AUDIO DIVISION  
APPLICATION STATUS: (202) 418-2730  
HOME PAGE: [www.fcc.gov/mb/audio/](http://www.fcc.gov/mb/audio/)

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Darby Advertising, Inc.  
P.O. Box 1766  
Gaylord, MI 49734

Re: WUPN(FM), Paradise, MI  
Facility ID No. 170940  
Darby Advertising, Inc.  
File No. BMPH-20110124ABU

Dear Applicant:

This letter refers to the above-captioned application for a minor modification to a construction permit.

An engineering review of the application reveals that the application is in violation of the *AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE CANADA RELATING TO THE FM BROADCASTING SERVICE IN THE BAND 88-108 MHZ* (USA-Canada Agreement). Specifically, our studies reveal that the proposal is short spaced to co-channel Class C allotment in Chapleau, Ontario, Canada and second-adjacent Class C allotment in Sault Ste Marie, Ontario, Canada. With respect to Chapleau, the proposed interfering contour (34 dBu) would cause prohibited overlap to the Chapleau allotment's protected contour (97 km). Furthermore, the proposed interfering contour (74 dBu) would cause prohibited overlap to Sault Ste Marie allotment's protected contour (58 dBu).<sup>1</sup> Thus, the application fails to comply with the USA-Canada Agreement. This deficiency constitutes an acceptance defect.

Pursuant to Section 73.3522 of the Commission's Rules,<sup>2</sup> "...an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff." Additionally, Section 73.3564 of the Commission's Rules<sup>3</sup> states that, "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed

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<sup>1</sup> The proposed allotment coordinates also violates the spacing requirements of the USA-Canada Agreement.

<sup>2</sup> 47 C.F.R. § 73.3522.

<sup>3</sup> 47 C.F.R. § 73.3564.

with no further opportunity for corrective amendment." See Appendix B in the Report and Order in MM Docket No. 91-347. This letter constitutes your opportunity for corrective amendment pursuant to Section 73.3522.

Further action on the subject application will be withheld for a period of thirty (30) days from the date of this letter to provide an opportunity to submit the requested information. Failure to correct all tender and acceptance defects within this time period will result in the dismissal of the application for failure to prosecute pursuant to 47 C.F.R. § 73.3568(a)(1).

Sincerely,



Edna V. Prado  
Supervisory Engineer  
Audio Division  
Media Bureau

cc: Howard Liberman  
Alfred Kenyon